

1 actually begin construction.

2 Q Did anything happen after August 30, 1990, that
3 prevented you from moving forward on construction?

4 A Well, during the month of August, actually we had
5 discussions with Rick Edwards regarding the transmitter
6 building construction, the three rooms in area during July
7 and August.

8 But in August, Mr. Edwards had not been totally
9 forthcoming in terms of the three rooms proposed
10 construction, and eventually we got blueprints from Mr.
11 Edwards that indicated to me that one of the rooms, it was
12 already preplanned, if you will, had dotted lines outlining
13 where equipment should be positions within that room.

14 Mr. Edwards told me that finally that they were
15 planning to enter into a lease with Press Broadcasting, and
16 that they were going to lease space within the aperture of
17 Rainbow's lease antenna space.

18 Lawyers got involved. Meetings with attorneys for
19 Guy Gannett took place. Guy Gannett threatened to cancel
20 our lease under some legal interpretation. To this day I do
21 not understand.

22 We ended up filing a lawsuit. I believe it was in
23 October of 1990 in Florida State Court. I think Guy Gannett
24 removed it, if that's the proper word, to Federal Court
25 shortly -- you know, within a week or so of us filing the

1 lawsuit.

2 I should add that, if the question to anything
3 precluded the construction, the answer i guess more
4 specifically, just rambling history, is that there was a
5 prehearing conference with Judge Marcus in November.

6 Q Judge Marcus is the judge --

7 A Judge Marcus is the presiding judge in Federal
8 Court. He is presiding for injunctive relief that we were
9 seeking at the time. And Judge Marcus on his own in that
10 prehearing conference asked, to the best of my recollection,
11 that the status quo be preserved. It was not Mr. Fromberg
12 that asked for it. It was the judge, I believe.

13 Q Who is Mr. Fromberg?

14 A Mr. Fromberg is attorney for Rainbow Broadcasting
15 at that time.

16 The ruling to me meant that the status quo should
17 be preserved, and according to the terms of the lease
18 Rainbow cannot construct without the landlord.

19 Q Well, would you turn to Rainbow Broadcasting
20 Company Exhibit 5 for a moment?

21 A Yes.

22 Q And can you tell me what you understand that
23 document to be?

24 A This document is an order setting the preliminary
25 injunction hearing to January 11th from the previous date of

1 December 20th.

2 Q Does that document include anything in it that
3 caused you to believe that you could not move forward with
4 construction?

5 A Well, in item two it says, "Defendants have agreed
6 to continue to preserve the status quo until January 11, and
7 not to sign a consummate agreement or lease with Press
8 and/or Channel 18 until the preliminary injunction hearing
9 and the outcome is determined."

10 This refers, I believe, to that prehearing
11 conference of November of 1990 in which Judge Marcus brought
12 up the issue of status quo preservation.

13 Q But it also refers to the Defendants and the
14 status quo.

15 How did that relate to your belief?

16 A Rainbow Broadcasting cannot build on that
17 facility, the facility meaning Gannett tower facility,
18 without the landlord. The lease specifically calls --

19 Q Well, would you turn, please, again to Rainbow
20 Broadcasting Exhibit 6?

21 A Yes.

22 Q Can you point out any provisions in that lease
23 which prevented Rainbow Broadcasting from construction the
24 station?

25 A Well, there are a couple of items.

1 In Article IV, page 6 of that lease, second
2 paragraph -- this is Article IV, Section C, second
3 paragraph, the very first sentence.

4 "Landlord will construct for tenant in addition to
5 the transmitter building generally in accordance with
6 Exhibit B hereto."

7 Further down it says, "The tenant will provide
8 landlord with name and references of a preferred contractor
9 to perform the construction work. Landlord's approval shall
10 not be unreasonably withheld."

11 And further down it says, "Landlord agrees to
12 commence construction with reasonable promptness and to
13 prosecute such construction to completion with reasonable
14 diligence."

15 I should add there is also another reference on
16 page 4 under Article III, paragraph B, "Cost of transmitter
17 building," fourth sentence down, "Landlord will be
18 constructing an addition in which tenant will occupy an
19 exclusive areas to house's transmitter equipment. Landlord
20 shall bill tenants monthly for the actual cost of said
21 transmitter building and shall provide tenant with
22 photocopies of all invoices from all contractors to evidence
23 the actual cost of construction."

24 There may be other references. Those are two that
25 I have marked.

1 Q Did you discuss those provisions with counsel,
2 Rainbow counsel, at anytime?

3 A Rainbow counsel in the Miami litigation or Rainbow
4 counsel at the FCC?

5 Q Well, either counsel.

6 A Yes.

7 Q And did they advise you with regard to those
8 provisions?

9 A It was clear that Rainbow could not go into that
10 property and build on its own.

11 Q Do you know why the landlord under that lease
12 would not be able to build?

13 A It was prohibited by Judge Marcus.

14 Q Would you turn to Rainbow Exhibit 7, page 17?

15 A Yes.

16 Q Have you seen that document before?

17 A Yes.

18 Q Did that document sometime come into your
19 possession?

20 A Yes, it did, as a result of the discovery phase in
21 what I call the Miami litigation or the tower litigation as
22 it's been referred to.

23 MR. EISEN: Your Honor, I believe Press
24 Broadcasting objected to the admission of this document.

25 JUDGE CHACHKIN: Rainbow 7 was deferred.

1 MR. EISEN: Yes. I have copies of pleadings in
2 discovery in the court proceeding that Mr. Rey just
3 testified to. A production order and a response from Press
4 Broadcasting which, although making several objections to
5 the production request, also conceded that it would provide
6 documents within the date range included in this letter.

7 And under those circumstances I would like to move
8 again that this document be accepted into the record.

9 MR. COLE: Your Honor, my objection was one of
10 relevance and I don't think that has been met at all. I
11 assume if Your Honor seen the relevance, it is. Whether
12 it's been authenticated or not is --

13 MR. EISEN: Well, the relevance of the document is
14 that it comports with the testimony of the witness; namely,
15 that the Defendant, because of the judicial order, was
16 unable to do anything beyond the status quo, and that's the
17 sole purpose for its -- for its being in evidence.

18 MR. COLE: Your Honor, what this letter reflects
19 is that the Defendant was unable to alter the status quo
20 with respect to Press.

21 MR. EISEN: But ---

22 MR. COLE: It's a different story as to whether or
23 not Mr. Rey is testifying to Mr. Rey's understand of the
24 status quo order he has adverted to from Judge Marcus, also
25 precluded Gannett, the tower landlord, from working with

1 Rainbow. I don't believe this letter is probative to that
2 question.

3 MR. EISEN: I disagree, Your Honor. I think it's
4 probative. It has a limited purpose. All it does is
5 confirm what the witness testified to.

6 JUDGE CHACHKIN: Well, it --

7 MR. SILBERMAN: The Separate Trial Staff supports
8 Rainbow on this. We think the letter should go in subject
9 to cross-examination to test the witness on his recollection
10 at the time.

11 JUDGE CHACHKIN: I will receive Rainbow 7 will be
12 received.

13 MR. EISEN: Thank you, Your Honor.

14 And that's to the Trial Staff.

15 JUDGE CHACHKIN: And therefore the entire Rainbow
16 Exhibit 7 has been received.

17 (The document referred to,
18 having been previously marked
19 for identification as Rainbow
20 Exhibit No. 7, was received in
21 evidence.)

22 MR. EISEN: And at this time, Your Honor, I would
23 also move to receive into evidence Rainbow Exhibit 6, which
24 is the lease agreement, which Mr. Rey testified to.

25 JUDGE CHACHKIN: Any objection to Rainbow Exhibit

1 6?

2 Rainbow Exhibit 6 is received.

3 MR. COLE: I'm sorry, Your Honor.

4 Is it being offered just as to the testimony of
5 Mr. Rey; that is, just those areas to which he testified.

6 MR. EISEN: It's being offered to show that that's
7 the lease which covered the ---

8 JUDGE CHACHKIN: Well, I think counsel is -- has a
9 right to know what portions of this lease you feel are
10 relevant.

11 MR. EISEN: I think the entire lease is relevant.

12 JUDGE CHACHKIN: I mean, are there any particular
13 provisions in this lease which you assign some importance
14 to?

15 MR. EISEN: Certainly those portions of the lease
16 to which Mr. Rey testified.

17 JUDGE CHACHKIN: Well, are there any other
18 portions of the lease which deserves special scrutiny?

19 MR. EISEN: No, not special scrutiny.

20 MR. SILBERMAN: May I just ask counsel for
21 Rainbow, is this the lease that was the subject of the
22 litigation in Rey v Gannett?

23 MS. POLIVY: Yes, it is.

24 MR. EISEN: I believe he has already testified to
25 that.

1 JUDGE CHACHKIN: Is this the lease that was the
2 subject of litigation?

3 MR. EISEN: Yes.

4 MR. COLE: And if I may add, Your Honor.

5 JUDGE CHACHKIN: Go ahead.

6 MR. COLE: The exhibits to those lease are the
7 core of the litigation in the Miami case.

8 JUDGE CHACHKIN: All right, I will receive Rainbow
9 Exhibit 6.

10 MR. EISEN: Also, I am not clear as to whether or
11 not Exhibit No. 5 has been received into evidence.

12 (The document referred to was
13 marked for identification as
14 Rainbow Exhibit No. 6, was
15 received in evidence.)

16 JUDGE CHACHKIN: It has.

17 MR. EISEN: It has. Okay.

18 JUDGE CHACHKIN: According to my notes it was
19 received June 26th by your offer.

20 MR. EISEN: Did you confirm that, Your Honor?

21 JUDGE CHACHKIN: Yes.

22 MR. EISEN: Thank you.

23 BY MR. EISEN:

24 Q Mr. Rey, did there come a time when the lawsuit
25 that you discussed was decided?

1 A Well, I'm not too sure what you mean by the
2 lawsuit. We sought injunctive relief in front of Judge
3 Marcus. That was decided in June of 1991. The merits were
4 not decided. They were eventually settled years later.

5 Q But what happened with regard to the request for
6 preliminary injunction?

7 A Judge Marcus denied the injunctive relief that
8 Rainbow sought.

9 Q And do you recall what the date was?

10 A I've heard here June 6th. I also subscribe to
11 that date. I know it was early to mid June.

12 Q Of what year?

13 A 1991. I'm sorry.

14 Q Did the court's decision at that time allow you to
15 begin further construction?

16 A Judge Marcus freed, I think, the status quo to be
17 changed, yes.

18 Q And what, if anything, did Rainbow do after the
19 injunctive relief?

20 A Rainbow picked up where it had left off last
21 August or September or October. We had left off prior to
22 Judge Marcus. Again, looking to build its transmitter room
23 in that three-room addition that the landlord wanted to
24 build.

25 Q On June 6, 1991, do you recall what was the status

1 of Rainbow Broadcasting Company's construction permit before
2 the Commission?

3 A In June 1991, I believe it was about to expire.

4 Q And did Rainbow Broadcasting Company do anything
5 about that?

6 A We filed an extension that you referred to
7 earlier, that June 21st or 25th extension request.

8 Q After Rainbow Broadcasting Company filed that
9 request with the Commission, did Rainbow do anything else
10 regarding construction?

11 A Rainbow went ahead and became part of the three-
12 room construction at the tower for its transmitter room. We
13 build this transmitter room, in essence.

14 Q When was the building completed?

15 A I would say November 1991.

16 Q Was there any other construction that Rainbow
17 undertook subsequent to the filing of the extension request?

18 A Construction?

19 Q Yes.

20 A Physical construction?

21 Q Right.

22 A The only thing that comes to mind is the
23 transmitter building.

24 Q Why was nothing else constructed?

25 A Well, I can't go and buy a million dollar

1 transmitter. I don't have the money. The loan that I have
2 with Mr. Conant, I am not going to ask him for the money not
3 having a valid construction permit, it was pending, and the
4 deal with him was that it was free and clear, and that was
5 not free and clear.

6 So I will take a \$60,000 gamble with my money, but
7 I am not going to risk a penny of Howard's money.

8 Q So when you say a \$60,000 risk, what are you
9 referring to?

10 A That was approximately the cost of the transmitter
11 building.

12 Q And why do you believe that there was no valid
13 construction permit at that time?

14 A It was pending and it was being challenged.

15 Q Do you know when it expired?

16 A Which one?

17 The June was about to expire.

18 Q Okay.

19 A I believe you have to file a request for extension
20 30 days prior comes to mind. I am not 100 percent sure. So
21 it must have had a month left, thereabouts.

22 Q Was the June 25, 1991, extension request ever
23 granted?

24 A Yes, it was granted eventually in what I said
25 earlier, August 1, 1993, as a bench date. I think it could

1 be July 31st or August 2nd.

2 Q And after it was granted, did you do anything
3 further toward construction of the station?

4 A We immediately picked up where we had left off in
5 1991. By now we had the transmitter building already built.
6 So we went ahead and revisited equipment, bought equipment,
7 and installed it, and eventually when the FCC allowed us we
8 went on the air in June of 1994.

9 Q Between August 30, 1990, and the grant of the
10 extension, how much of the period did you believe that RBC
11 had a valid construction permit?

12 A August 30, '90 and August of '93.

13 Four months, three and a half, four months. Yeah,
14 thereabouts.

15 Q How did you calculate that?

16 A Well, September of '90, October of '90, and I am
17 including November of '90 because the prehearing conference
18 was late in November of '90. The status quo order took
19 effect in late November. So December is no, January is no,
20 Feb. is a no. April is a no. May is a no.

21 And then Judge Marcus came back, we have said June
22 6th, I can't subscribe to the date. So then there is
23 roughly a month and a half left there before it expires. So
24 I am saying, yeah, four months, thereabouts.

25 Three up front, another one and a half, so four,

1 four and half months before it expired in July.

2 Q Of what --

3 A 1991.

4 And then it was not --

5 Q In how many of those months do you believe that
6 you were free to construct the station?

7 A Well, I thought Rainbow Broadcasting Company had
8 two years from August 30, 1990, to start with; that we were
9 free to construct the station, I think I just answered, four
10 months, broken up into three months in 1990, and five or six
11 weeks in 1991.

12 Q Are you familiar with Howard Conant?

13 A Yes, I am.

14 Q Can you recall when you first met him?

15 A I recall meeting him in late 1978, in Chicago.

16 Q What were the circumstances of you meeting him?

17 A It was at a restaurant. I was with a friend, and
18 I was introduced to him. He happened to have been at the
19 same restaurant.

20 Q Can you call how you were employed at the time?

21 A 1978, I'm employed by Storer Broadcasting Company
22 as national sales manager of their Miami radio stations.

23 Q And did there come a time that you left Storer?

24 A In January of 1980, I left Storer.

25 Q Between 1978 and 1980, can you recall

1 approximately how often you had occasion to meet Mr. Conant?

2 A Five - six times, something like that.

3 Q Were these business meetings or social meetings?

4 A No, these were social meetings.

5 Q And were these in Chicago or some other place?

6 A No. In '78 to '80, in Chicago. I would go into
7 Chicago quite often, and I would try to make a point to call
8 him up or stop by his office or tried to get a sandwich with
9 him; that type of thing.

10 Q After you left Storer, how did you become
11 employed?

12 A I was general manager of two radio stations in
13 Miami.

14 Q And what were your duties as general manager?

15 A I was general manager. I was in charge of the
16 entire operation. I also acted as national sales manager
17 for the same radio stations. So I had a similar
18 responsibility to my previous one with Storer in which I
19 went around the country and tried to bring revenues home,
20 advertising revenues.

21 Q And during the time that you served as general
22 manager of the Miami radio stations, did you continue to
23 have occasions to meet Mr. Conant?

24 A Yeah, three or four times a year.

25 Q And were these social meetings or business

1 meetings?

2 A Yeah, again, the same.

3 Q What was the period of time you worked as general
4 manager at the radio stations?

5 A I worked there until August of 1982.

6 Q And then in 1982, how did you become employed?

7 A I became vice president of sales for a new TV
8 station owned, the call letter of WDZL at Miami, Florida.

9 Q And can you tell me what your duties were at that
10 television station?

11 A Again, I was in charge of all sales. I acted as
12 national sales manager, but I also was involved in the
13 overall operation. I worked closely with the general
14 manager in all facets of the station.

15 Q Did you continue to have occasion to meet with Mr.
16 Conant?

17 A While employed at WDZL?

18 A Yes. A lot more now.

19 Q Why was that?

20 A Well, Mr. Conant was a 49 percent limited partner
21 in WDZL. I had numerous opportunities to bring him up to
22 date, give him status reports and whatnot as related to the
23 station. So the meetings were far more frequent now.

24 Q Can you recall how frequent they were?

25 A Six - eight times.

1 Q Per?

2 A Year. I'm sorry.

3 Q And where did these meetings take place?

4 A Both Chicago and Miami.

5 Q How long did you work at WDZL as sales manager?

6 A August of 1982 through June of 1984.

7 Q Why did you leave WDZL?

8 A The station was sold.

9 Q By the time you left the television station had
10 you learned anything about Mr. Conant's financial status?

11 A Yes.

12 Q How did you learn about it?

13 A Again, in working closely with the general
14 manager, the upper management of the station. The station
15 went on the air in October. So when I got there the
16 station --

17 Q October of what year?

18 A I'm sorry.

19 The station went on the air in October of 1984. I
20 was employed there in August of -- strike that. Incorrect
21 date.

22 October of 1982 the station goes on the air. I
23 was employed there in August of 1982. In those few months
24 prior to the station going on the air I worked closely with
25 the general manager in all aspects of the station, including

1 filing and position, the private files, if you will, and
2 whatnot. I had seen the application, the original
3 application to the FCC in which Howard's financial
4 statements were there. I also worked with the loan
5 agreement and Howard's financial documents were there. I
6 worked with the loan agreements all throughout my employment
7 at WDZL.

8 Q What did Mr. Conant have to do with the loan
9 agreement of WDZL?

10 A Mr. Conant had guaranteed the loan that funded the
11 entire operation.

12 Q And is it your testimony that you saw documents
13 concerning that loan?

14 A Yes.

15 Q Did those documents include financial information
16 about Mr. Conant?

17 A Yes.

18 Q And what particularly did you learn about his
19 financial status?

20 A Howard was and is a wealthy man.

21 Q What does that mean?

22 A Well, his net worth was in the eight figures.

23 Q And how did you derive that to be the case?

24 A From seeing his financial statements.

25 Q When you say in the eight figures, does that mean

1 in excess of any particular dollars?

2 A In excess of \$10 million.

3 Q Other than having reference to those financial
4 statements to which you've just testified, did you have any
5 other knowledge of his financial position?

6 A Well, in conversations with Howard I knew that he
7 owned Interstate Steel. He also owned -- yeah, he had sold
8 a paint company that had been a family business. He had
9 real estate holdings as well as, obviously, an interest --
10 40 percent interest in WDZL.

11 Q What did you know about Interstate Steel?

12 A That he was the owner of Interstate Steel.
13 Interstate Steel was a large steel company in Chicago.

14 Q Did you ever discuss with Mr. Conant the
15 possibility of him being RBC's lender?

16 A Yes.

17 Q When did you first raise this with him?

18 A To the best of my recollection, the first time I
19 raised it with him was very late in 1983.

20 Q And did there come a time when you and Mr. Conant
21 reached an agreement regarding financing for Rainbow
22 Broadcasting Company?

23 A Yes.

24 Q When was that, if you recall?

25 A Mid 1984. I don't recall the exact date.

1 Q Can you recall the facts and circumstances
2 surrounding the way that you reached this agreement?

3 A I met with Howard in his office in Chicago, and we
4 discussed audience and sales projections as well as
5 expenses, and the Orlando market in general. We finalized
6 our negotiations and ended up in an agreement.

7 Q Well, you say "negotiations."

8 How much was the full amount of the loan for?

9 A He was willing to lend up to \$4 million.

10 Q And how was that amount reached?

11 A Well, that was based on the needs to construct and
12 operate the station for approximately a year.

13 Q Did you provide him with any documents regarding
14 the television project?

15 A That's what I was referencing before. Audience
16 projections and sales projections derived from those
17 audience projections and expenses, et cetera.

18 Q Can you describe the terms of the agreement that
19 you reached with Mr. Conant?

20 A Yes. Howard was going to lend up to \$4 million at
21 an interest rate of 2 percent above the prime as charged by
22 the Continental Bank. It was payable over five years in
23 monthly installments. He was to receive 50 percent of the
24 positive cash flow for the first five years, and 25 percent
25 thereafter. Upon sale of the station he was to receive 10

1 percent of the net sales price. He required our -- "our"
2 meaning myself and Leticia's personal guarantee, and the
3 loan was subject to a free and clear construction permit.

4 Q Was that agreement reduced to writing?

5 A No.

6 Q Do you know why it wasn't?

7 A Well, comparative hearing litigation was still
8 ongoing and we agreed that at the time that it was free and
9 clear we would put in writing and go forward.

10 Howard is a deal type of person, and it's not
11 unusual from what I know of Howard to make oral deals and
12 stick to them. I think to him they are worth more.

13 Q Did you give to Mr. Conant any ownership interest
14 in Rainbow Broadcasting Company?

15 A No.

16 Q Do you have any knowledge as to why he required
17 you to provide your guarantee?

18 A Knowing Howard, it goes to commitment. It goes to
19 commitment.

20 Q Can you describe what you mean by that?

21 A Well, Howard is a trusting person. Trust is a big
22 element of friendship with Howard. A personal guarantee, I
23 mean, he knew that I could not personally repay that money,
24 but it goes to my commitment, and I'm going to break my tail
25 to make sure that the project is as good as I can make it

1 to be and that I am totally committed to it. It's a comfort
2 level for him, I would say, within a friendship, or within a
3 business transaction such as this one.

4 Q Did you agree to give the guarantee?

5 A Yes.

6 Q Do you know whether or not Ms. Jaramillo also
7 agreed to provide her personal guarantee?

8 A I asked her and she agreed. I subsequently --

9 MR. SILBERMAN: Objection, Your Honor. That's
10 hearsay.

11 MR. EISEN: Well, he can testify --

12 JUDGE CHACHKIN: I will overrule the objection.

13 THE WITNESS: I asked her and she agreed, yes.

14 BY MR. EISEN:

15 Q Did you tell anything to Mr. Conant?

16 A I told Mr. Conant that she had agreed.

17 Q Did you inform Mr. Conant that you had filed a
18 lawsuit concerning your tower lease?

19 A Yes.

20 Q When was that?

21 A In late 1990, I met with Howard, and I brought him
22 up to speed on the -- on the RBC status, and I told him
23 there had been a lawsuit filed; that there was a competitor
24 that was attempting to move its transmitting site to our
25 transmitting site; and that I was very concerned that, you

1 know, RBC's value could be nil.

2 Q Well, can you explain why you concluded that it
3 could be nil?

4 A Well, in preparing for this preliminary
5 injunction, we had solicited an expert witness to assess the
6 value I guess for purposes of damages. But anyway, to
7 assess the value of RBC, and it was that expert witness's
8 opinion that RBC was valueless if it were to be the sixth
9 station in the Orlando market at the time.

10 I also believed it. I mean, 1990 was the
11 recession year. Advertising budgets projected for 1991 were
12 already lower, were expected to be lower than 1990. I mean,
13 it was a very pessimistic outlook. And I concurred with it.
14 I thought it was worthless if that were to happen.

15 And I told him about it.

16 Q You told Mr. Conant --

17 A Yes.

18 Q -- your feelings?

19 A Yes.

20 Q Did Mr. Conant at that time attempt to alter the
21 financing agreement in any way?

22 A No. Howard -- Howard, I guess, was concerned
23 about my pessimism, but he was not subscribing that the
24 whole thing was dead. He thought it was premature. I mean,
25 the preliminary injunction had not been heard or decided.

1 He thought I was projecting too far ahead at the time; and
2 that we should wait and see how it developed. But he was
3 still on board.

4 Q Well, as a result of this meeting that you just
5 describe with Mr. Conant, did you reach a conclusion of any
6 kind as to whether or not Mr. Conant would have financed
7 RBC's construction if RBC became the sixth instead of the
8 fifth station in the market?

9 A Howard was relying on my opinion as a broadcaster.
10 And if I were to go to Howard and say, "Howard, this is not
11 worth doing," he would have retracted immediately. He is
12 not a broadcaster. He's a businessman. And he had made
13 that clear to me; that a big element here was, you know, how
14 I saw it, my opinion of the project.

15 Q Did there come at time that you told Mr. Conant
16 that the Federal District Court had denied the preliminary
17 injunction?

18 A Yes.

19 Q When did you tell him that?

20 A I don't recall exactly when. It was the summer of
21 '91. Probably soon after, you know, late June or something
22 like that.

23 Q And can you describe what was said in the course
24 of that particular discussion?

25 A Well, things had changed, you know, had evolved

1 over the last seven months, and I was not -- nowhere near as
2 pessimistic as I was seven months earlier. I told him that
3 we were free to go ahead, and that I thought that it was
4 worthwhile doing it.

5 Q Was there any particular intervening factor that
6 made you less pessimistic?

7 A Well, things were beginning to change. There was
8 a big uplift after the Gulf War. There was talk about a
9 possible new network emerging in the near future, and the
10 clincher was learning that Nielsen was going to meter their
11 Orlando market in the very near future.

12 Q What did the Nielsen metering have to do with the
13 potential of the Orlando station?

14 A Under diary methodology new stations don't fare
15 well at all. A lot of studies that I have heard or seen
16 that diaries are filled out by the viewer not religiously as
17 the viewing is done, but rather they are filled out after
18 the fact. And the element of memory recall is key.

19 Usually the well established stations fare very
20 well, but the new stations are not top of mind, if you will,
21 and they are not listed. So ratings improve dramatically
22 because meters actually record viewing as it happens as
23 opposed to relying on a human to recall that viewing.

24 In Miami, WDZL went from a three share to an eight
25 share overnight. It was dramatic for a new station,